

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JONES WASHINGTON STEVEDORING
COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-207

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from two \$250 civil penalties for the alleged violation of Section 9.03 of respondent's Regulation I and two \$250 civil penalties for the alleged violation of Section 9.15 of respondent's Regulation I, having come on regularly for formal hearing on the 11th day of February, 1980 in Seattle, Washington, and appellant Jones Washington Stevedoring Company represented by its president, Clayton Jones, and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin with Nancy E. Curington, hearing officer presiding, and the Board having

1 considered the exhibits, records and files herein, and having reviewed
2 the Proposed Order of the presiding officer mailed to the parties on
3 the 28th day of February, 1980, and more than twenty days having
4 elapsed from said service; and

5 The Board having received no exceptions to said Proposed Order and
6 the Board being fully advised in the premises; NOW THEREFORE,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
8 Order containing Findings of Fact, Conclusions of Law and Order dated
9 the 28th day of February, 1980, and incorporated by reference herein
10 and attached hereto as Exhibit A, are adopted and hereby entered as
11 the Board's Final Findings of Fact, Conclusions of Law and Order
12 herein.

13 DATED this 28th day of March, 1980.

14 POLLUTION CONTROL HEARINGS BOARD

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17 NAT W. WASHINGTON, Chairman

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19 CHRIS SMITH, Member

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21 DAVID AKANA, Member

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JONES WASHINGTON STEVEDORING COMPANY)

Appellant,)

v.)

PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)

Respondent.)

PCHB No. 79-207

PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER

This matter, the appeal from two \$250 civil penalties for the alleged violation of Section 9.03 of respondent's Regulation I and two \$250 civil penalties for the alleged violation of Section 9.15 of respondent's Regulation I, came before the Pollution Control Hearings Board at a formal hearing in Seattle on February 11, 1980. Nancy E. Curington presided.

Appellant was represented by its president, Clayton Jones. Respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits and

Exhibit A

1 having considered the contentions of the parties, the Pollution
2 Control Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed a certified copy
6 of its Regulation I and amendments thereto, which are noticed.

7 II

8 On November 1, 1979, at approximately 10:34 a.m., respondent's
9 inspector observed the ship GEORG RUSS at the Port of Tacoma. After
10 positioning himself, he observed emissions rising from the south
11 conveyor belt feeding into the delivery spout of the GEORG RUSS, and
12 recorded 50% opacity for 16 of 16 minutes. He mailed Notice of
13 Violation No. 16660 to the appellant, Continental Grain Company,
14 Matson Navigation Company and the Port of Tacoma. On November 20,
15 1979, respondent sent by certified mail to the appellant, the
16 Continental Grain Company, Matson Navigation Company and the Port of
17 Tacoma, Notice and Order of Civil Penalty of \$250 (No. 4520) for the
18 alleged violation of Section 9.03 of respondent's Regulation I. The
19 Notice and Order of Civil Penalty is the subject of this appeal by
20 Jones Washington Stevedoring Company.

21 III

22 Also on November 1, 1979, at 10:53 a.m., respondent's inspector
23 observed grain dust emissions coming from the south conveyor belt. A
24 Continental Grain employee told the inspector that the belt could be
25 moved a few inches one way or the other to eliminate dust; no effort
26 was made to do so. The inspector mailed Notice of Violation No. 16661

by certified mail to the appellant, the Continental Grain Company, the Matson Navigation Company, and the Port of Tacoma. On November 20, 1979, respondent sent by certified mail Notice and Order of Civil Penalty of \$250 (No. 4521) for the alleged violation of Section 9.15(a) of Regulation I, to appellant, Continental Grain Company, Matson Navigation Company and the Port of Tacoma. The Notice and Order of Civil Penalty is the subject of this appeal by Jones Washington Stevedoring Company.

IV

On November 1, 1979 at approximately 10:15 a.m., respondent's inspector observed grain dust emissions coming from the #7 hold of the ship GEORG RUSS. After positioning himself, he observed the emissions and recorded 50% opacity for sixteen consecutive minutes. On November 6, 1979, the inspector mailed Notice of Violation No. 16658 to the appellant Continental Grain Company, Matson Navigation Company and the Port of Tacoma. On November 20, 1979 respondent sent by certified mail Notice and Order of Civil Penalty of \$250 (No. 4518) to the appellant, Continental Grain Company, Matson Navigation Company and the Port of Tacoma. The Notice and Order of Civil Penalty is the subject of this appeal.

V

On November 1, 1979 at approximately 10:32 a.m., respondent's inspector observed grain dust emissions coming from the #7 hold of the GEORG RUSS while being loaded with beet pellets. If the ship had been moved 40 feet one way or another, the chute could have been better aligned in order to avoid dust emissions. On November 6, 1979, the

1 inspector sent by certified mail Notice of Violation No. 16659 (No.
2 4519) to the appellant, Continental Grain Company, Matson Navigation
3 Company and the Port of Tacoma. On November 20, 1979, respondent
4 mailed Notice and Order of Civil Penalty of \$250 to the appellant,
5 Continental Grain Company, Matson Navigation Company, and the Port of
6 Tacoma. The Notice and Order of Civil Penalty is the subject of the
7 instant appeal.

8 VI

9 Notices and Orders of Civil Penalty Numbers 4518 and 4519 and the
10 corresponding Notice of Violations identify the emissions as rising
11 from the #1 hold of the ship GEORG RUSS. Because of the position of
12 the vessel, the inspector numbered the holds incorrectly at the time
13 of the alleged violations. The appellant did not load cargo into the
14 #1 hold.

15 VII

16 Section 9.03 of respondent's Regulation I makes it unlawful for
17 any person to cause or allow the emission of any air contaminant for a
18 period totalling more than three minutes in any one hour which is of
19 an opacity equal to or greater than 20%.

20 Section 9.15 of respondent's Regulation I makes it unlawful for
21 any person to cause or permit particulate matter to be handled,
22 transported or stored without taking reasonable precautions to prevent
23 the particulate matter from becoming airborne.

24 Section 3.29 of respondent's Regulation I provides for a civil
25 penalty of up to \$250 per day for each violation of Regulation I.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant did not violate Section 9.03 of respondent's Regulation I as alleged, on November 1, 1979, by allowing or causing an air emission of dust in excess of the limits established by the regulations. The Notices of Violation and Notices and Orders of Civil Penalty alleged the dust came from #1 hold which was not loaded by the appellant.

II

Respondent did not demonstrate that appellant caused or permitted handling, transporting or storing of particulate matter without taking reasonable precautions. Consequently the two civil penalties No. 4520 and 4521 should be vacated as to the appellant.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following


ORDER

The four \$250 civil penalties are vacated as to the appellant.

1 Since the Continental Grain Company, the Matson Navigation Company and
2 the Port of Tacoma did not appeal the civil penalties, the civil
3 penalties as to them are not affected by the Board's decision.

4 DATED this 28th day of February, 1980.

5 POLLUTION CONTROL HEARINGS BOARD

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8 NANCY E. CURINGTON
9 Administrator

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26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER